IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7026 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITEN HANSRAJBHAI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 7026 of 2004

MR TUSHAR MEHTA for Petitioner No. 1

MR SN SINHA for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/10/2004

ORAL JUDGEMENT

1. RULE. Mr. Sinha waives service of rule on behalf of the respondent. With the consent of the

parties, the matter is taken up for final hearing today.

2. The petitioner has by way of this petition challenged the order dated 22nd September, 2003 passed by the Appellate Committee, in Appeal No. 14109, whereby the Appellate Committee while partly allowing the appeal has directed to revise the bill by adopting Factor "D" for the period between 16th October, 2001 to 1st January, 2002 i.e. for 77 days.

3. I have heard Mr. Mehta learned advocate for the petitioner and Mr. Sinha learned advocate for the respondent and have perused the relevant record. It appears that the Appellate Committee has not considered the representation and contentions raised by the petitioner before the Appellate Committee.

4. I find substance in the submission of learned advocate for the petitioner. I am of the opinion that the Appellate Committee has not considered and dealt with certain contentions raised on behalf of the petitioner. Under the circumstances, it would be appropriate to remand the matter to the Appellate Authority to rehear and decide the appeal after taking into consideration the evidence adduced by the petitioner. However, since the matter is being remanded for fresh decision, I am not entering into the merits of the case, which may cause prejudice to either side.

5. In the premises aforesaid, the impugned order dated 22nd September, 2003 passed by the Appellate Committee in Appeal No. 14109 is quashed and set aside.

6. The matter is remanded to the Appellate Committee for fresh decision. The Appellate Committee shall rehear and decide the appeal afresh on merits after taking into consideration the evidence adduced by the petitioner, without being influenced by the present order, since the order is passed without entering into the merits of the case and by the earlier order which is the subject matter of challenge.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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